

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

Charles P. Jones,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	Civil Action No. 06-129 ***
Thomas Carroll, Alisa Profaci,	)	
Peter Forbes and Joe Pomella,	)	
	)	
Defendants.	)	

**DEFENDANTS' OPPOSITION TO  
PLAINTIFF'S MOTION FOR APPOINTMENT OF COUNSEL**

Defendants, by and through undersigned counsel, hereby oppose Plaintiff's Motion for Appointment of Counsel, and request this Honorable Court to deny Plaintiff's Motion.

Defendants waive their right to file a brief in opposition to said motion, and allege the following:

1. Plaintiff, Charles P. Jones, is an inmate currently incarcerated in the Delaware Correctional System at the Delaware Correctional Center (hereinafter "DCC"). On or about February 27, 2006, Plaintiff commenced this action by submitting to the Court his complaint and a request to proceed *in forma pauperis*. The Court has already summarized the substance of Plaintiff's complaint:

The facts in this case are straightforward. Jones alleges that on the evening of September 12, 2005, he was attacked by another inmate. The inmate stabbed Jones in the right eye with a sharpened toothbrush. Jones sustained serious injury to the eye, was taken to the emergency room at the Kent General Hospital, and later transferred to the Wills Eye Hospital in Philadelphia, Pennsylvania for further care and treatment. Jones alleges he underwent several eye surgeries including a cornea transplant and full retina reattachment. At the time of the filing of the complaint, Jones continues to receive treatment at the Wills Eye

Hospital.

Jones alleges that Warden Carroll failed to protect him from attack by failing to implement policies and procedures to insure the safety of vulnerable inmates from violent and aggressive inmates. Jones alleges that Deputy Warden Pierce and Holeman<sup>1</sup> failed to supervise staff to ensure that the staff was performing its duties in compliance with departmental policies and procedures. Finally, Jones alleges that Staff Lt. Alisha Profaci, Lt. Peter Forbes, and C/O Joe Pomella were either told or were aware of the threats made against him by his attacker, yet failed to protect him from the attack.

*Jones v. Carroll, et al*, Civil Action No. 06-129 KAJ, *mem. order*, May 12, 2006.

Basically, Plaintiff claims defendants violated his Eighth Amendment right for failure to protect him. (D.I.I. 2, 13).

2. Plaintiff has also filed several motions for Appointment of Counsel. In support of his motions, Plaintiff has stated factors to sustain appointment such that he is incarcerated; has limited access to the DCC law library; is unskilled and ignorant of the law; expert testimony from the opposing side would put him at a considerable disadvantage, and lastly, appointment of counsel would serve the interests of justice in this case. (See, e.g. D.I.3). In response, the Defendants urged that this case was neither factually nor legally complex and that a review of the pleadings and other papers filed in this case demonstrated the ability of the Plaintiff to litigate this action *pro se*. Upon consideration, the Court consistently concluded that “his allegations are not of such a complex nature as to warrant appointment of counsel at this time.” (See, e.g., D.I. 13).

3. As Plaintiff concedes, appointment of counsel in this matter is discretionary. (See, D.I. 56). “The Supreme Court has not recognized nor has the court of appeals found a constitutional right to counsel for civil litigants.” Parham v. Johnson, 126 F.3d 454, 456 (3d Cir. 1997) (citations omitted). Nor do civil litigants possess a statutory right to appointed counsel.

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<sup>1</sup> All claims against Deputy Warden Pierce and Major Holman (misspelled “Holeman” in the complaint) were dismissed as legally and factually frivolous pursuant to 28 § 1915(e)(2)(B) and § 1915A(b)(1).

Id. at 457. In exercising its discretion, the Court must make a determination based “upon a showing of special circumstances indicating the likelihood of substantial prejudice to [plaintiff] resulting from [plaintiff’s] probable inability without such assistance to present the facts and legal issues to the court in a complex but arguably meritorious case.” Smith-Bey v. Petsock, 741 F.2d 22, 26 (3d Cir. 1984); accord, Tabron v. Grace, 6 F.3d 147, 155 (3d Cir. 1993) (representation by counsel may be appropriate under certain circumstances, after a finding that a plaintiff’s claim has arguable merit in fact and law). Thus far, the Plaintiff has not made a showing of any other special circumstances indicating the likelihood of substantial prejudice.

4. Plaintiff’s legal abilities are apparent as reflected in the pleadings filed up to now, i.e. Complaint (D.I. 2); six Motions for Appointment of Counsel (D.I. 3, 23, 31, 45, 48, 56) Motion to Amend the Complaint (D.I. 12); Initial Disclosures (D.I. 35); Discovery Requests for Production of Documents (D.I. 36, 43) and a Motion to Compel (D.I. 42). Plaintiff has demonstrated that he has a clear understanding of the issues and has proven himself quite capable in responding and addressing his claims in this Court.

5. On or about March 26, 2007, in Plaintiff’s most recent Motion for Appointment of Counsel filed, he claims that he will be released from incarceration sometime in mid April, 2007, “leaving [him] without the help of a law trained person thereafter.” (D.I.56). He alleges that he “does not have the ability to present his own case without the help of a law-trained person from the Delaware Correctional Center Law Library due to the excessive strain on the injured eye, which has placed strain on the other eye.” Id.

6. Concerning Plaintiff’s ability to present his own case, he argues in his motion that he has been prescribed a medication “imipramine” to treat depression he describes as “interfere[ing] with daily functioning.” On February 27, 2007, examination of plaintiff’s mental

health progress note reflects that plaintiff stopped taking imipramine weeks prior when he began experiencing some pain and swelling to his body. (See Routine Mental Health Visit-Mental Health Progress Note attached as Exhibit “A”). Again, on March 15, 2007, plaintiff’s request for medical services states that he put in a sick call slip for services concerning his refusal to take medications. (See Correctional Medical Services Request for Medical Services attached as Exhibits “B”). Nonetheless, these medical notes do not suggest that he exhibited such symptoms as a change in appetite, change in mind or body coordination, increased fatigue, difficulty concentrating, slowed thinking and suicidal thoughts, as he implies in his motion.

7. On April 6, 2007, despite contrary claims, plaintiff visited with a mental health clinician who observed that plaintiff presented with good eye contact, a cooperative interview attitude, normal speech, logical and coherent thought process, normal motor activity, no abnormal thought content, and appropriate affect with average intelligence. (See Routine Mental Health Visit-Mental Health Progress Note attached as Exhibit “C”). Moreover, the plaintiff reported that the medication change helps with his mood, improved sleep and appetite. *Id.* If plaintiff now attempts to argue to the Court that he is too unskilled to proceed in the absence of court appointed counsel, his argument will be outweighed by his prior performance in the filing the above outlined pleadings. Plaintiff’s artful pleadings demonstrate his understanding of the particular issues and facts of the case and his ability, without assistance of counsel, to present the facts and legal issues to the court.

8. Plaintiff’s essential claim is cruel and unusual punishment in violation of his Eighth Amendment right. This case is neither factually nor legally complex. In filing discovery requests, Plaintiff demonstrates his ability to pursue a sufficient factual investigation to support his claims. As well, credibility will not be the central issue in this case nor will expert testimony

be required. Given this analysis of the Tabron factors, Plaintiff's request for counsel is unsubstantiated. Tabron 6 F.3d at 155-56.

9. Most *pro se* litigants have little or no help from law trained persons to assist them in legal research and writing, filing pleadings or copying costs; responsibilities that Plaintiff will continue to carry out upon his release. Conversely, Plaintiff will also no longer be subject to DCC's regulations which restrict his movements at all times as a prisoner. In addition, there are law libraries, in all three counties which are opened to the public and where Plaintiff can continue researching and working on his case. As previously stated, the Plaintiff has demonstrated throughout this litigation that he understands the issues and is fully capable of litigating this case.

10. Plaintiff raises no new issues in this motion for appointment of counsel which would require the Court to treat it differently than Plaintiff's prior motion for appointment counsel. (See Defendants' Opposition to Plaintiff's Motion for Appointment of Counsel, D.I. #15, and Order, D.I. #19). This case remains "neither factually nor legally complex." (See Order, D.I. #19 ¶2). Plaintiff continues to demonstrate the ability to litigate this action pro se by filing thorough pleadings and discovery requests, as well as adhering to Court Orders. Finally, Plaintiff fails to demonstrate any other "special circumstances indicating the likelihood of substantial prejudice."

WHEREFORE, based on the foregoing reasons, Defendants respectfully request this Honorable Court enter an order denying Plaintiff's motion for appointment of counsel.

STATE OF DELAWARE  
DEPARTMENT OF JUSTICE

/s/Ophelia M. Waters  
Ophelia M. Waters, I.D. No. 3879

Date: April 19, 2007

Deputy Attorney General  
Carvel State Building 6<sup>th</sup> Floor  
820 N. French Street  
Wilmington, Delaware 19801  
(302) 577-8400

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	)	
Defendants.	)	

**ORDER**

AND NOW THIS \_\_\_\_\_ day of \_\_\_\_\_, 2007, the Plaintiff's Motion for Appointment of Counsel having been presented and the parties' pleadings with respect thereto having been considered,

IT IS HEREBY ORDERED that Plaintiff's Motion for Appointment of Counsel is DENIED.

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UNITED STATES DISTRICT JUDGE

***CERTIFICATE OF SERVICE***

I hereby certify that on April 19, 2007 I electronically filed *Defendants' Opposition to Plaintiff's Motion for Appointment of Counsel* with the Clerk of Court using CM/ECF. I hereby certify that on April 19, 2007 I have mailed by United States Postal Service, the document to the following non-registered participant: Charles P. Jones; SBI # 00228197; Delaware Correctional Center; 1181 Paddock Road; Smyrna, DE 19977.

**STATE OF DELAWARE  
DEPARTMENT OF JUSTICE**

/s/ Ophelia M. Waters  
Ophelia M. Waters, I.D. #3879  
Deputy Attorney General  
820 North French Street, 6<sup>th</sup> Floor  
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(302)577-8400  
ophelia.waters@state.de.us



# **EXHIBIT A**

## MENTAL HEALTH PROGRESS NOTE

**SUBJECTIVE:**

Face to face contact with client ☒ in office ☐ cell side ☐ group ☐ on unit ☐ other: \_\_\_\_\_  
 Reason for contact: ☒ sick call ☒ RMHV ☐ referral ☐ crisis ☐ referral ☐ evaluation  
 Statements/events: \_\_\_\_\_

☐ Reports taking psychotropic meds as prescribed ☒ Not compliant with meds due to \_\_\_\_\_  
☐ None prescribed at this time Side effects: ☐ No ☒ Yes, describe: swelling of his testicle  
only takes the Prozac

**OBJECTIVE: Mental Status Exam:**

<b>Appearance:</b> <input checked="" type="checkbox"/> Neat/Clean <input type="checkbox"/> unkempt <input type="checkbox"/> Disheveled <input type="checkbox"/> Good eye contact <input type="checkbox"/> Poor eye contact	<b>Speech:</b> <input checked="" type="checkbox"/> Normal <input type="checkbox"/> Loud <input type="checkbox"/> Soft <input type="checkbox"/> Pressured <input type="checkbox"/> Blocked	<b>Thought Process:</b> <input checked="" type="checkbox"/> Logical/Coherent <input type="checkbox"/> Tangential <input type="checkbox"/> Looseness Associations <input type="checkbox"/> Flight of Ideas <input type="checkbox"/> Perseverations	<b>Hallucinations:</b> <input checked="" type="checkbox"/> Denied <input type="checkbox"/> Auditory <input type="checkbox"/> Visual <input type="checkbox"/> Other: _____	<b>Insight:</b> <input checked="" type="checkbox"/> Good <input type="checkbox"/> Fair <input type="checkbox"/> Poor	<b>Suicidal Ideations:</b> <input checked="" type="checkbox"/> No <input type="checkbox"/> With Plan <input type="checkbox"/> W/O Plan
<b>Interview Attitude:</b> <input checked="" type="checkbox"/> Cooperative <input type="checkbox"/> Unresponsive <input type="checkbox"/> Evasive <input type="checkbox"/> Manipulative <input type="checkbox"/> Guarded <input type="checkbox"/> Argumentative	<b>Mood:</b> <input checked="" type="checkbox"/> Stable <input type="checkbox"/> Euthymic <input type="checkbox"/> Depressed <input type="checkbox"/> Anxious <input type="checkbox"/> Irritable	<b>Thought Content:</b> <input checked="" type="checkbox"/> No Abnormal <input type="checkbox"/> Obsessions <input type="checkbox"/> Compulsions <input type="checkbox"/> Phobias <input type="checkbox"/> Euphoric	<b>Motor Activity:</b> <input checked="" type="checkbox"/> Normal <input type="checkbox"/> Slowed <input type="checkbox"/> Restless <input type="checkbox"/> Agitated	<b>Judgment:</b> <input checked="" type="checkbox"/> Good <input type="checkbox"/> Fair <input type="checkbox"/> Poor	<b>Homicidal Ideations:</b> <input checked="" type="checkbox"/> No <input type="checkbox"/> With Plan <input type="checkbox"/> W/O Plan
<b>Orientation:</b> <input type="checkbox"/> X4 <input checked="" type="checkbox"/> Person <input checked="" type="checkbox"/> Place <input checked="" type="checkbox"/> Time	<b>Affect:</b> <input checked="" type="checkbox"/> Appropriate <input type="checkbox"/> Flat <input type="checkbox"/> Restricted <input type="checkbox"/> Blunted <input type="checkbox"/> Labile <input type="checkbox"/> Inappropriate	<b>Delusions:</b> <input checked="" type="checkbox"/> None Observed <input type="checkbox"/> Persecutory <input type="checkbox"/> Grandiose <input type="checkbox"/> Somatic <input type="checkbox"/> Influence	<b>Intelligence:</b> <input checked="" type="checkbox"/> Average <input type="checkbox"/> Below Average <input type="checkbox"/> Above Average		

Observations: I/m was calm and cooperative

**ASSESSMENT: Diagnostic Impression**

AXIS I: ☐ GAD, Depression NOS

AXIS II: ☐ Deferred

AXIS III: ☒ Unknown ☐ None

Optional: AXIS IV: Incarceration AXIS V: Current GAF \_\_\_\_\_

Additional Assessment Comments: I/m reports that the Imipramine medication is having a bad side effect on him (Swelling of the Testicle) so he stopped taking the med for a week now.

**PLAN:**

- ☒ Has been educated on how to contact Mental Health PRN  
☒ F/U x30 days ☐ See psychiatrist @90 days  
☐ Continue working on treatment plan goals as written  
☒ Refer to psychiatrist for Psych. Eval/Med Review  
☐ Other: \_\_\_\_\_

CLINICIAN SIGNATURE / TITLE: Henry M. Telor Jr. MSW.

IM NAME: Jones, Charles SBI# 228197

DATE: 2/27/07 TIME: 8:00 AM

HOUSING UNIT C

**AXIS I:**

V65.2 Malingering  
 309.0 Adj. DO, Depr.  
 309.24 Adj. DO, Anx.  
 309.28 Adj. DO, Mixed  
 296.33 Maj. Depr. w/o psy  
 296.34 Maj. Depr. with psy  
 311 Depr. D.O., NOS  
 296.80 Bipolar D. O., NOS  
 296.4x Bipolar I, Manic  
 300.02 Gen. Anx. D. O.  
 309.81 PTSD 314.9 ADHD  
 312.30 Imp. Control, NOS  
 295.30 Chr. Schiz., par.  
 295.90 Chr. Schiz., undif.  
 295.70 Schizoaffective DO  
 293.82 Subs. Induced Psych  
 298.9 Psychosis, NOS  
 303.90 Alc. Dep., IACE  
 305.00 Alc. Abuse  
 305.20 Cannabis Abuse  
 304.30 Cannabis Dep., IACE  
 304.20 Cocaine Dep., IACE

**AXIS II:**

301.83 Borderline Pers. DO  
 301.7 Antisocial Pers. DO  
 319 MR, Unspecified  
 V71.09 None 799.9 Deferred

# **EXHIBIT B**

## DELAWARE DEPARTMENT OF CORRECTIONS

~~3-15-07~~ MEDICAL DENTAL SICK CALL SERVICES  
 Date of Birth SBI Number Date Submitted

Complaint (What type of problem are you having)?

need to speak  
with someone about meds

Charles J. Jones  
 Inmate Signature

3-15-07  
 Date

The below area is for medical use only. Please do not write any further.

S: 1/M SEEN FOR SICK CALL. "I'M NOT TAKING THOSE MEDS."

O: Temp: \_\_\_\_\_ Pulse: \_\_\_\_\_ Resp: \_\_\_\_\_ B/P: \_\_\_\_\_ WT: 1/M RPTS SIDE

EFFECTS FROM TAKING MEDS, IE SWELLING OF TESTICLES AND LIGHT HEADEDNESS.

1/M STOPPED TAKING IMIPRAMINE, <sup>(NO)</sup> SI/HI. <sup>(NO)</sup> SLEEP WNL. 1/M RELEASED IN A MTH.

A: Axis I: GAD, DEPRESSION NOS

- STABLE AT THIS TIME

P: REFER 1/M TO PSYCH FOR MED EVAL DUE TO SIDE EFFECTS RPTD.

E:

Michael J. Drummond, MD  
 Provider Signature & Title

3/20/07 1345  
 Date & Time

3/1/99 DE01

FORM#:

MED

263

# **EXHIBIT C**



## MENTAL HEALTH PROGRESS NOTE

## SUBJECTIVE:

Face to face contact with client ☒ in office ☐ cell side ☐ group ☐ on unit ☐ other: \_\_\_\_\_Reason for contact: ☐ sick call ☒ RMHV ☐ referral ☐ crisis ☐ referral ☐ evaluation

Statements/events: \_\_\_\_\_

1/1M SEEN FOR RMHV☒ Reports taking psychotropic meds as prescribed ☐ Not compliant with meds due to \_\_\_\_\_☐ None prescribed at this time Side effects: ☒ No ☐ Yes, describe: \_\_\_\_\_

## OBJECTIVE: Mental Status Exam:

## Appearance:

- ☒ Neat/Clean  
☐ Unkempt  
☐ Disheveled  
☒ Good eye contact  
☐ Poor eye contact

## Speech:

- ☒ Normal  
☐ Loud  
☐ Soft  
☐ Pressured  
☐ Blocked

## Thought Process:

- ☒ Logical/Coherent  
☐ Tangential  
☐ Looseness Associations  
☐ Flight of Ideas  
☐ Perseverations

## Hallucinations:

- ☒ Denied  
☐ Auditory  
☐ Visual  
☐ Other: \_\_\_\_\_

## Insight

- ☒ Good  
☒ Fair  
☐ Poor

## Suicidal Ideations

- ☒ No  
☐ With Plan  
☐ W/O Plan

## Interview Attitude:

- ☒ Cooperative  
☐ Unresponsive  
☐ Evasive  
☐ Manipulative  
☐ Guarded  
☐ Argumentative

## Mood:

- ☒ Stable  
☒ Euthymic  
☐ Depressed  
☐ Anxious  
☐ Irritable

## Thought Content:

- ☒ No Abnormal  
☐ Obsessions  
☐ Compulsions  
☐ Phobias  
☐ Euphoric

## Motor Activity:

- ☒ Normal  
☐ Slowed  
☐ Restless  
☐ Agitated

## Judgment

- ☒ Good  
☒ Fair  
☐ Poor

## Homicidal Ideations

- ☒ No  
☐ With Plan  
☐ W/O Plan

## Orientation:

- ☒ X4  
☐ Person  
☐ Place  
☐ Time

## Affect:

- ☐ Appropriate  
☒ Flat  
☐ Restricted  
☐ Blunted  
☐ Labile  
☐ Inappropriate

## Delusions:

- ☒ None Observed  
☐ Persecutory  
☐ Grandiose  
☐ Somatic  
☐ Influence

## Intelligence:

- ☒ Average  
☐ Below Average  
☐ Above Average

Observations: 1/1M PRESENTED E HAPPY MOOD, LEAVING 4/18/07.  
PROVIDED 1/1M WITH DISCHARGE INFO (SEE COPY  
OF LETTER IN FILE). 1/1M RPTS MED CHANGE  
HELPS E MOOD. IMPROVED SLEEP AND APPETITE  
RPTD: O/SI/HI

## ASSESSMENT: Diagnostic Impression

AXIS I: ☒ GAD BY CHART, DEPRESSIONAXIS II: ☒ NONEAXIS III: ☐ Unknown ☐ None HTN, RIGHT EYE TRAUMAOptional: AXIS IV: INCARCERATION AXIS V: Current GAF \_\_\_\_\_

Additional Assessment Comments: 1/1M SCHEDULED FOR APPT ON  
4/19 AT WILMINGTON COMMUNITY HEALTH. ENCOURAGED  
1/1M TO CONTINUE E MH SERVICES ONCE RELEASED.

## PLAN:

- ☒ Has been educated on how to contact Mental Health PRN  
☐ F/U x30 days ☐ See psychiatrist @90 days  
☐ Continue working on treatment plan goals as written  
☐ Refer to psychiatrist for Psych. Eval/Med Review  
☐ Other: \_\_\_\_\_

CLINICIAN SIGNATURE / TITLE: Mmit Dunning MDIM NAME: JONES CHARLES SBI# 228197DATE: 4/6/07TIME: 0915HOUSING UNIT C

## AXIS I:

V65.2 Malingering  
 309.0 Adj. DO, Depr.  
 309.24 Adj. DO, Anx.  
 309.28 Adj. DO, Mixed  
 296.33 Maj. Depr. w/o psy  
 296.34 Maj. Depr. with psy  
 311 Depr. D.O., NOS  
 296.80 Bipolar D. O., NOS  
 296.4x Bipolar I, Manic  
 300.02 Gen. Anx. D. O.  
 309.81 PTSD 314.9 ADHD  
 312.30 Imp. Control, NOS  
 295.30 Chr. Schiz., par.  
 295.90 Chr. Schiz., undif.  
 295.70 Schizoaffective DO  
 293.82 Subs. Induced Psych  
 298.9 Psychosis, NOS  
 303.90 Alc. Dep., IACE  
 305.00 Alc. Abuse  
 305.20 Cannabis Abuse  
 304.30 Cannabis Dep. IACE  
 304.20 Cocaine Dep., IACE

## AXIS II:

301.83 Borderline Pers. DO  
 301.7 Antisocial Pers. DO  
 319 MR, Unspecified  
 V71.09 None 799.9 Deferred